Federal Court Cour fédérale

Date: 20241023

Docket: IMM-7636-23

Citation: 2024 FC 1676

Ottawa, Ontario, October 23, 2024

PRESENT: The Honourable Justice Fuhrer

BETWEEN:

Cristian Armando HERNANDEZ GUTIERREZ
Maria Guadalupe RANGEL ANGUIANO
Iker Uziel QUIROZ RANGEL
Said Emmanuel HERNANDEZ RANGEL

Applicants

and

THE MINISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants, two adults and their two minor children, are a family of four from Mexico. They fled to Canada because of their fear of the Cartel Jalisco New Generation [CJNG].

The Principal Applicant Cristian Armando Hernandez Gutierrez was targeted by members of the CJNG to work for them in his capacity as an internet and cable installer technician.

[2] The Applicants sought protection as Convention refugees or persons in need of protection. The Refugee Protection Division [RPD] and the Refugee Appeal Division [RAD] of the Immigration and Refugee Board of Canada [IRB] dismissed their claims. Both the RPD and the RAD determined that the Applicants have an internal flight alternative [IFA] in Mérida in the state of Yucatán.

[3] The Applicants seek to have the RAD decision set aside. They argue that the RAD’s assessment of the motivation of the CJNG to locate them in Mérida was unreasonable.

[4] The Respondent argues that the RAD provides cogent, well-reasoned findings regarding the CJNG’s lack of motivation, and that the Applicants ask the Court to reweigh the evidence. I agree.

[5] The RAD’s reasons, in my view, do not represent a fundamental misapprehension of the evidence, as the Applicants argue, but rather they permit the Court to understand the RAD’s rationale for its IFA determination. For the more detailed reasons below, the judicial review application will be dismissed.

II. Analysis

[6] As I explain, the Applicants have not met their onus of establishing the unreasonableness of the RAD decision, the sole issue for determination.

[7] I find there are no circumstances here that displace the presumptive reasonableness review standard. A reasonable decision is one that exhibits the hallmarks of justification, transparency and intelligibility, and is justified in the context of the applicable factual and legal constraints: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at paras 10, 17, 25, 99-100.

[8] The Applicants challenge the RAD's assessment of the first branch of the test for a viable IFA, and specifically, whether the CJNG is motivated to find them in Mérida.

[9] There is no disagreement about the RAD's statement of the two-pronged IFA test. First, the RAD must be satisfied on a balance of probabilities that there is no serious risk of the claimant being persecuted, or subjected personally to a risk to life or cruel or unusual treatment or punishment or danger, in the IFA. Second, the conditions in the IFA must be such that it would not be unreasonable in all the circumstances, including those particular to the claimant, to seek refuge there.

[10] The parties agree that it is the Applicants' burden to demonstrate both parts of the IFA test from *Rasaratnam v Canada (Minister of Employment and Immigration)*, 1991 CanLII 13517

(FCA), namely, that there was a serious possibility of persecution in the proposed IFA location, and that it would be objectively unreasonable for them to seek refuge there.

[11] On its independent review of the evidence, the RAD found that the risk to the Applicants and any interest by the CJNG in the Applicants was localized and, further, that the CJNG does not have the motivation, on a balance of probabilities, to conduct a country-wide search to locate the Applicants in Mérida.

[12] The Applicants' argument that because the RAD did not take issue with the credibility of their testimony means that their stated fear of returning to Mexico must be taken as true, in my view, seemingly does not accord with the Court's jurisprudence. Justice Walker, formerly of this Court, agreed with the RAD's observation (in the case before her) that there is "a difference between giving testimony in a credible manner and the preponderance of the evidence required to demonstrate that a person is in need of protection": *Sanchez v Canada (Citizenship and Immigration)*, 2023 FC 144 at para 16.

[13] The IFA assessment requires more than credible testimony from applicants — "[a]n applicant must provide actual and concrete evidence of conditions that would jeopardize his or her life or safety in the location proposed": *Ma v Canada (Citizenship and Immigration)*, 2023 FC 1340 at para 25. More to the point, the IRB is not required to accept every assertion made by an applicant simply because it finds them generally credible: *Jimenez v Canada (Immigration, Refugees and Citizenship)*, 2018 FC 1225 at para 15.

[14] Bearing these principles in mind, I find the Applicants have not shown that the RAD overlooked or failed to address any particular element of their claims or engaged in speculation. Rather, their submissions in this judicial review essentially and impermissibly ask the Court to reweigh the evidence that was before the RAD, which is not the role of a reviewing court: *Vavilov*, above at para 125. I provide three examples.

[15] First, the Applicants take issue with the RAD's finding that the CJNG is not motivated to locate them in Mérida because of the lack of evidence of the CJNG "placing pressure on or contacting their family who notably reside in León." This is the place where the Applicants assert that the Principal Applicant initially was targeted by the CJNG, while he was making an internet installation, demanding that he use his vehicle to transport merchandise for the cartel. While it was not a determinative factor, it was one the RAD nonetheless reasonably took into account, in my view.

[16] The Applicants say that just because they are unaware of specific attempts made by the CJNG to locate them through family or friends, especially after they were all in Canada, does not mean that none was made. In my view, this argument is speculative. More to the point, the Applicants have not persuaded me that the RAD's reasoning on this issue in paragraph 15 of the RAD decision is unreasonable. In other words, I am satisfied that it "adds up": *Vavilov*, above at para 104.

[17] This Court previously has observed, the "absence of evidence that the agents of persecution made any effort to locate the applicants is sufficient to support a finding that the

agents of persecution have no ongoing interest in pursuing them in the proposed IFAs": *Ortiz Ortiz v Canada (Citizenship and Immigration)*, 2022 FC 1066 at para 26.

[18] The Applicants' reliance on this Court's decision in *Orgona v Canada (Minister of Citizenship and Immigration)*, 2001 FCT 346 [*Orgona*] does not assist them in my view. Leaving aside the different factual matrix in *Orgona*, I am not persuaded that the RAD here was selective in its consideration of the national documentation package [NDP] for Mexico, nor is the case before me one where the RAD doubted the credibility of their documentation, unlike in *Orgona* (above at para 31).

[19] As I understand it, the Applicants argue that because the NDP documentation does not state that organized criminal groups *always* abduct and torture family to locate targeted individuals, then it was erroneous speculation for the RAD to conclude that because the CJNG did not abduct and torture their family members, the CJNG was not motivated to find them. I cannot agree.

[20] In my view, it was within the RAD's mandate to consider the probity of and weight to give the evidence of lack of family pursuit by the CJNG, which it did reasonably. The Applicants' argument on this point not only is tantamount to a request to reweigh the evidence, in my view, but also seeks to shift the evidentiary burden to the RAD.

[21] Second, the Applicants argue that the one-year period during which the adult Associate Applicant lived in Irapuato with the minor Associate Applicants before they left Mexico is not

enough to assess the CJNG's continued motivation. While the adult Associate Applicant received a threatening phone call during that time, the CJNG did not approach her. In my view, the Applicants' reliance on this Court's decision in *Rivera Benavides v Canada (Citizenship and Immigration)*, 2020 FC 810, also does not assist them. I am not persuaded that Justice Little set a temporal threshold in the sense that a period of one year is too little time on which to assess the motivation of the agents of harm. Each matter turns on its facts viewed holistically.

[22] Further, the RAD acknowledged not only the asserted phone call to the adult Associate Applicant (in paragraph 19 of the RAD decision), but also the CJNG's follow up visits to the property where the Applicants resided in León before the Principal Applicant fled for Canada and which subsequently was rented to tenants from 2019 to 2021 (in paragraph 13 of the RAD decision). Again, it was within the RAD's mandate to consider and weigh the probity of this evidence which, in my view, it did reasonably.

[23] The Applicants submit that although there is a lack of evidence to demonstrate that the CJNG attempted to pursue the adult Associate Applicant after her relocation to Irapuato, there also is a lack of evidence that the CJNG has stopped searching for the Associate Applicant by way of pursuing the Principal Applicant. This argument also is consistent, in my view, with a request to reweigh the evidence and an effort to shift the evidential burden to the RAD.

[24] Third, the Applicants take issue with the RAD's assessment of the Principal Applicant's profile and whether the CJNG would be motivated to locate him because of it. The Applicants have not persuaded me that the assessment was unreasonable.

[25] The RAD acknowledged all of the Applicants' submissions about the Principal Applicant's profile (at paragraphs 21-22 of the RAD decision). While the RAD agreed that an absence of evidence of pursuit by the CJNG is not determinative nor the sole factor in demonstrating motivation by the agents of harm, the RAD stated that a holistic assessment is required. The RAD provided cogent reasons why it disagreed with the Applicants' arguments and why it found there was insufficient evidence that the CJNG has the motivation or interest to locate the Applicants in Mérida.

[26] In my view, the Applicants' reliance on *Lopez Escobedo v Canada (Citizenship and Immigration)*, 2023 FC 116 is not helpful because, contrary to the Applicants' submissions, I find that it is not analogous to their situation and is distinguishable. Notably, the Applicants here were not indebted to the CJNG, as in *Lopez Escobedo*. Further, the RAD did not speculate about the Principal Applicant's profile. The RAD's reasonable findings on this issue ultimately turned on the localized nature of the risk which the RAD explained intelligibly earlier in the decision.

III. Conclusion

[27] For the above reasons, I find the RAD decision is justified, transparent and intelligible. The judicial review application thus will be dismissed.

[28] Neither party proposed a serious question of general importance for certification. I find that none arises in the circumstances.

JUDGMENT in IMM-7636-23

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed.

2. There is no question for certification.

"Janet M. Fuhrer"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-7636-23
STYLE OF CAUSE:	CRISTIAN ARMANDO HERNANDEZ GUTIERREZ, MARIA GUADALUPE RANGEL ANGUIANO, IKER UZIEL QUIROZ RANGEL, SAID EMMANUEL HERNANDEZ RANGEL V THE MINISTER OF CITIZENSHIP AND IMMIGRATION
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